IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

AGUSTIN T. AGUILAR,

Plaintiff,

1:22-CV-1313-ADA

V.

HAVERDA ENTERPRISES D/B/A
ACE CONTRACTORS SUPPPLY,
ET AL.,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge Mark Lane. ECF No. 16. The report recommends that this Court grant the Individual Defendants' Rule 12(b) Motion to Dismiss (ECF No. 6) and deny without prejudice Haverda Enterprises' Motion to Dismiss, or Alternatively, Motion for Summary Judgment (ECF No. 7). The undersigned further recommends Plaintiff's Motion to Change Venue or Alternatively Motion to Compel Discovery (ECF No. 9) be construed as a motion to dismiss without prejudice and Aguilar's claims be dismissed without prejudice. The report and recommendation was filed on June 27, 2023.

A party may file specific, written objections to the proposed findings and recommendations of the magistrate judge within fourteen days after being served with a copy of the report and recommendation, thereby securing *de novo* review by the district court. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). As of today, neither party has filed objections.

When no objections are timely filed, a district court reviews the magistrate judge's report and recommendation for clear error. *See* Fed. R. Civ. P. 72 advisory committee's note ("When no timely objection is filed, the [district] court need only satisfy itself that there is no clear error

on the face of the record in order to accept the recommendation."). The Court has reviewed the report and recommendation and finds no clear error.

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge Lane (ECF No. 16) is ADOPTED.

IT IS FURTHER ORDERED that Individual Defendants' Rule 12(b) Motion to Dismiss (ECF No. 6) is **GRANTED**.

IT IS FURTHER ORDERED that Haverda Enterprises' Motion to Dismiss, or Alternatively, Motion for Summary Judgment (ECF No. 7) is **DENIED** without prejudice.

IT IS FURTHER ORDERED that Plaintiff's Motion to Change Venue or Alternatively Motion to Compel Discovery is construed as a motion to dismiss without prejudice and Aguilar's claims are **DISMISSED** without prejudice.

SIGNED this 28th day of July, 2023.

ALAN D ALBRIGHT

UNITED STATES DISTRICT JUDGE